



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF T-S-S-

DATE: JUNE 14, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an environmental economist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework. In addition, he contends that the Director imposed an overly high standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification

requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

Although not addressed by the Director, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree. The evidence reflects that he received a bachelor of arts degree in economics and business administration from [REDACTED] in California in 1979. In addition, the Petitioner provides letters from his former employers, [REDACTED] and [REDACTED] indicating that he has at least five years of progressive post-baccalaureate experience in his specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).<sup>4</sup>

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The denial decision stated that "since the petitioner did not submit this required evidence, USCIS must deny the Form I-140." With the appeal, the Petitioner offers a properly signed and fully executed ETA-750B form. Accordingly, the Director's finding on this issue is withdrawn. As discussed below, however, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The record includes a March 2000 letter from [REDACTED] stating: "In February 2000, [REDACTED] inherited operation of our Company's Field Office in [REDACTED] the Kingdom of Saudi Arabia, as well as authority over employee records for its local staff which included [the Petitioner]."

<sup>4</sup> As further evidence of his progressive post-baccalaureate experience, the Petitioner has offered a timeline of events relating to the [REDACTED] and [REDACTED] oil field, a corporate overview of [REDACTED] a [REDACTED] in [REDACTED] and an article about the [REDACTED] and its oil spill response activities in the Persian Gulf.

A. Substantial Merit and National Importance of the Proposed Endeavor

In Part 6 of the Form I-140, “Basic Information About the Proposed Employment,” the Petitioner listed his job title as “Marine Environmentalist” and indicated that he will “consult with respect to issues related to the protection of the marine environment.” In addition, the Petitioner has asserted that he intends “to offer consulting services to private companies and government agencies” as an environmental economist. He further states:

As a consultant, [the Petitioner] wishes to engage with civil organizations, academia and private sector partners throughout the United States to impart his knowledge and experience in the areas of knowledge management, that is, managing knowledge products and training activities to improve best practices in environmental economics, particularly economic instruments for environmental change policy; economic valuation; political economy of environmental reforms; and impact evaluation of environmental interventions.

In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. The record, however, does not include evidence of the Petitioner’s proposed projects in the United States, or other information about the specific consulting work the Petitioner will undertake in this country. In denying the petition, the Director indicated that the Petitioner did not submit a detailed description of his proposed endeavor and evidence of its substantial merit and national importance.

On appeal, the Petitioner does not offer additional evidence or arguments for this prong, nor does the record support a finding that he meets it. To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The Petitioner has not provided adequate information to establish that his proposed work as a consultant has implications at a level sufficient to establish the national importance of his endeavor.<sup>5</sup> For example, he does not sufficiently explain or demonstrate how his future work as a consultant stands to affect the oil industry or environmental economics field. Nor does the record show, for instance, that the specific work the Petitioner proposes to undertake stands to offer original innovations to advance the aforementioned industry, or that it otherwise has wider implications in his field. As the Petitioner has not established that his specific endeavor’s prospective impact supports a finding of national importance, he has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications.<sup>6</sup> The Petitioner submitted his academic records, a “Certificate of Work Record” from [REDACTED] and a

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<sup>5</sup> In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>6</sup> The Petitioner states that his “work in environmental matters began in 1991 and continued until his retirement from the

letter from [REDACTED] discussing his job experience. In addition, the Petitioner offered two photographs indicating that he attended a 1991 meeting of [REDACTED] copies of his [REDACTED] business cards, and his "End-Of-Service Certificate" (August 2002) from [REDACTED]. With respect to his qualifications, the Petitioner states:

[The Petitioner's] 35 years with the [REDACTED] (including the four years he spent in the United States earning his baccalaureate degree) demonstrates [*sic*] a past history of demonstrable achievement. With his knowledge of American and Arab cultures, and fluency in English and Arabic, he has a proven ability to influence his field of expertise as a whole. Having worked for the largest oil company in the world . . . at all levels of its oil production, [the Petitioner] is truly one of the few persons who possesses a breadth and depth of understanding of such economic and environmental issues.

While the "Certificate of Work Record" from [REDACTED] and letter from [REDACTED] indicate that the Petitioner has experience in material pricing, managing inventory, and financial reporting and analysis (for the marine and aviation departments), the record does not show that this past experience renders him well positioned to advance his proposed endeavor aimed at starting an environmental economics consulting service. The record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that he is well positioned to advance his proposed consultancy business. Nor does the evidence show that the Petitioner's track record of running a business, plan for future activities, and progress towards establishing his company rise to the level of rendering him well positioned to advance the proposed endeavor. For these reasons, he has not established that he satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Because the Petitioner has not established the national importance of his proposed endeavor and that he is well positioned to advance his endeavor as required by the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver. Accordingly, discussion of the balancing factors under the third prong would serve no meaningful purpose.

## III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

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[REDACTED] in September 2002." According to the Petitioner's Form ETA-750B, he has not been employed since September 2002.

*Matter of T-S-S-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-S-S-*, ID# 1365037 (AAO June 14, 2018)